



Dear Customer,

Thank you for your interest in the services provided by Malec Holdings Pty Ltd ACN 077 896 201 trading as Malec Bros Transport Group (referred to as **we** or **us**) and or its related entity¹. Enclosed with this letter, please find the following:

- 1. Credit Application (**Application**) (pages 2 - 6)
- 2. Terms and Conditions (**Terms**) (pages 7 - 16)
- 3. Guarantee and Indemnity (**Guarantee**) (pages 17- 21)

To apply for credit with us, please complete the Application. We will treat this information in accordance with our Privacy Policy, which is available at www.malec.com.au/privacy

Once we have assessed the Application, we will notify you to advise whether the Customer has been approved or declined. We may also request further information before making a decision.

If we approve the Application, the Customer will be bound by the Terms and the named Guarantor(s) will be bound by the Guarantee. The Application, the Terms and Guarantee will together form the contract documents, which apply to and form part of every order placed by the Customer for transport carrier services.

CONFIRMATION

By completing the Application:

- 1. you warrant and represent that you have full authority to complete and sign the Application on behalf of the Customer;
- 2. you warrant and represent that the information provided in the Application is true and correct;
- 3. you acknowledge that we have relied upon the information provided in the Application to determine whether or not to grant credit to the Customer; and
- 4. you acknowledge that you have read, understood and accepted the Terms and agree that the Customer will be bound by them subject to approval of the Application.

.....
Signature

.....
Name (please print)

Please note: if you submit the Application and use our services, you will be taken to have provided the above confirmation, even if you have not signed where indicated.

If you have any queries or concerns, please do not hesitate to contact us.

¹ Malec Management Group (ABN 13 625 357 548), Malec Qld Pty Ltd (ABN 12 631 056 623), Malpynec Pty Ltd (81 601 510 525); Malec Terminal Logistics Pty Ltd (ABN 11 649 032 155)



CREDIT APPLICATION

The Customer has been provided Malec's Terms as set out in this Application. If the Customer's Credit Application is approved, services will be provided in accordance with those Terms.

Payment is due in respect of the supply of the Goods and Services unless otherwise stated in writing by Malec in accordance with the Terms.

Malec may charge liquidated damages at a rate equivalent to seven percent (7%) per annum if payment is not received by the due date.

The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on an indemnity basis) incurred by Malec for enforcement of obligations and recovery of monies due from the Customer to Malec.

If the Customer is making application as a Business and sells the Business or the Business ceases to trade, payment of all outstanding moneys must be paid to Malec upon settlement of the sale of Business or on the day the Business ceases to trade.

For the avoidance of doubt, the level of credit offered or provided to the Customer (if any), remains at all times a matter for Malec's sole determination and any provision of credit may be varied or withdrawn (in whole or in part, and either temporarily and/or permanently) from time to time at the Malec's sole discretion.

1. Customer's details:

Customer's Name (including trading name if applicable):	Entity Type: <input type="checkbox"/> trust <input type="checkbox"/> company <input type="checkbox"/> partnership <input type="checkbox"/> sole trader
ABN:	ACN: (if applicable):
Address:	
Telephone:	Email:

2. Directors' details:

Complete this section if the Customer is a company or a trust with one or more corporate trustee or a partnership with one or more corporate partners

Director's Name:	Date of Birth:
Address:	Phone:
	Email:

If the abovenamed person is the sole director, please tick this box: Otherwise, please complete the details below. For additional directors, please add another page.

Director's Name:	Date of Birth:
Address:	Phone:
	Email:

3. Contact person for dispatch:

Name:	
Phone:	Email:

4. Contact person for accounts:

Name:	
Phone:	Email:

5. Credit request

Monthly credit requested:	\$
Payment Terms:	Strictly 7 days

6. Trade References (Must be an Authorised Credit Provider)

Company Name and Contact:
Company Name and Contact:

Trade references: IMPORTANT NOTICE: by completing this section, the Customer authorises Malec to obtain a credit report on the Customer's credit worthiness from the listed trade references and/or from a credit reporting agency.

IMPORTANT

You should only sign this declaration if this credit/loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may lose your protection under the National Credit Code.

Company Name:	Contact person:
Phone:	Email:

Company Name:	Contact person:
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Phone:	Email:
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Company Name:	Contact person:
Phone:	Email:

7. Guarantors: *This section must be signed and dated by the named guarantors where indicated.*

Name of First Guarantor:	
Phone:	Email:
Signature:	Date:

Name of Second Guarantor:	
Phone:	Email:
Signature:	Date:

ACKNOWLEDGEMENT & AUTHORITY PURSUANT TO THE PRIVACY ACT 1988 (CTH)

I/We understand that the Customer has applied to Malec for a Trading Account in relation to the supply of services by Malec from time to time.

I/We acknowledge that we have read Malec's Terms and Conditions and agree to be bound to those Terms and Conditions.

I/We acknowledge that all information provided to Malec is correct in every detail.

I/We further acknowledge and understand that as directors/partners/principal/ or guarantor of the Applicant (as applicable), Malec may seek credit reporting information from a credit reporting body and credit information and credit eligibility information from other credit providers concerning my/our personal credit dealings.

Malec maintains a credit reporting data management policy about the collection, management and disclosure of credit information and credit eligibility information held by it. This policy also addresses a number of matters required under the Credit Reporting Code of Conduct (CR code).

Acknowledgment and Authority that Credit Information may be given to a Credit Reporting Body

I/We understand that Section 21D of the Privacy Act permits Malec to disclose to a credit reporting body certain credit information concerning my/our association with the Customer's credit application.

I/We understand that the information which may be given to a credit reporting body includes:

- Identifying details of myself/ourselves.

- The type and amount of credit sought in an application to Malec (or that I/We have offered to act as guarantor(s) in respect of the Trading Account arrangement).
- Payments of \$150 or more which become more than 60 days overdue.
- Advice that payments are no longer overdue.
- That in the opinion of Malec I/we have committed a serious credit infringement in relation to consumer credit provided to me/us.
- That the credit provided to me/us by Malec has been discharged.
- Any court judgment that relates to any credit that has been provided to, or applied for by, me/us.
- Any personal insolvency information about me/us (as defined in the Privacy Act 1988 (Cth)).
- Publicly available information about me/us that relates to my/our activities in Australia and my/our credit worthiness.

Malec is likely to disclose personal information about me/us to the following credit reporting bodies.

Veda Veda-Public Access

Website: www.mvcreditfile.com.au

NB Veda is the primary Credit Reporting Body used by Malec

Dunn &Bradstreet D&B Public Access Centre:

Email PACAustral@dnb.com.au

or call: 1300 734 806

Website: <https://www.checkyourcredit.com.au>

I/we acknowledge I/we can find the full list of the kinds of credit information, and the purpose for which Malec collects and holds credit relating personal information, in Malec's Privacy Policy located at www.malec.com.au/privacy

Authority for the Supplier to obtain and disclose Credit Information I/we authorise Malec to:

- Obtain from a credit reporting body credit reporting information about me/us.
- Obtain information about my/our commercial activities or commercial credit worthiness from a business which provides information about commercial creditworthiness.
- Use or disclose such information for the purpose of assessing my/our application for commercial credit or collecting payments that are overdue in relation to the credit the subject of my/our application

Authority to Exchange Information with Other Credit Providers

I/We authorise Malec to seek and obtain from credit providers credit eligibility information about me/us for the purposes of assessing my/our application for credit, assisting in collecting payments that are overdue in relation to my/our credit, notifying other credit providers of a default by me/us, exchanging information with other credit providers as to the status of the Customer's loan where I/we are in default with other credit providers and assessing my/our credit worthiness.

I/We understand this information can include any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give to or receive from each other under the Privacy Act.

Banker's Opinions

I/We authorise Malec to seek and obtain a banker's opinion for purposes connected with my/our business, trade or profession.

Use of Information

I/We understand the information obtained by Malec may be used for any of the purposes referred to in this authority and to notify Malec's successor and assigns, Malec's financiers and/or any assignees or any lender to an assignee of Malec's interests in any Amount(s) Payable arising under the Terms of trade between the Applicant and Malec from time to time.

Disclosure to Guarantor

I/We authorise Malec to disclose credit eligibility information about me/us to:

- a guarantor, to keep the guarantor informed about the guarantee; and

- to someone I/we have indicated is a prospective guarantor, for the purpose of that person considering whether to offer to act as guarantor in relation to the commercial credit applied for by me/us.

I/We understand that the information disclosed can include any credit eligibility information that credit providers are allowed to disclose under the Privacy Act.

PRIVACY ACT 1988 (CTH) — SECTION 20F(1) Item 3 • ACKNOWLEDGEMENT AND AUTHORITY BY GUARANTOR(S)

I/We agree that Malec may seek from a credit reporting body credit reporting information about me/us to assess whether to accept me/us as a guarantor for credit applied for, or provided to, the Customer.

I/We agree that this agreement commences from the date of this agreement and continues until the credit the subject of the Customer's application is fully discharged.

I/We also agree that Malec may give to and receive from another credit provider credit eligibility information about my/our consumer or commercial credit worthiness for the purpose of assessing a commercial credit application made by the Applicant to the other credit provider, or collecting any payment under a commercial credit arrangement that is overdue to a credit provider by the Applicant.

I/We agree that if the Applicant's credit application is approved, then this Acknowledgment and Authority remains in force until the credit provided to the Applicant(s) and the subject of the application has been fully discharged.

I/We agree that if the Applicant's credit application is approved, then this Acknowledgment and Authority remains in force until the credit provided to the Applicant(s) and the subject of the application has been fully discharged.

AUTHORITY PURSUANT TO THE PRIVACY ACT 1988 (CTH)

I/We have read and understand this Acknowledgement and Authority, and duly authorise Malec to perform the actions described herein.

8. Status of Application

This section is for internal use only. Do not complete this section.

Name of Malec representative:	
Reference check comments:	
Application status: <input type="checkbox"/> Approved <input type="checkbox"/> Further information requested <input type="checkbox"/> Declined	If approved, date of account activation:
Signature:	Date:



TERMS AND CONDITIONS

These terms and conditions (**Terms**) between Customer and Malec Holdings Pty Ltd ACN 077 896 201 trading as Malec Bros Transport Group (**Malec**) and its related entities² apply to the provision of Services by Malec and come into effect immediately on engagement of the Services.

1 Definitions and interpretation

In these Terms, unless the context otherwise requires:

Charge means the charges payable for carriage calculated in accordance with Malec's rates as amended from time to time (plus any additional charges agreed by the parties verbally or in writing) and any tax including a goods and services tax (GST).

Customer means the party/person entering into the contract of Services with Malec, being the shipper, consignor, receiver, consignee, the owner of the Goods or their authorised agent as named in Item 1 of the Application receiving the Services.

Force Majeure means an act of God including but not limited to fire, flood or earthquake; strike, lockout or other industrial disturbance; breakdown or failure of equipment; accident; act of any sovereign country including but not limited to act of a foreign enemy, war declared or undeclared, revolution or insurrection; imposition of government sanction, embargo or similar; blockade; delays in transportation; failure of utility service; and anything else beyond the control of a party.

Goods means the goods received or to be received by Malec from the Customer for the purpose of carriage to the place or destination of delivery as instructed by the Customer and includes, but is not limited to, any container, boxes, bulker bags, raw timber, taxi boxes, tubes, packaging or pallets supplied with the goods.

Hire Equipment means pallets, cages, shipping, containers, Trailers, Taxi Boxes and any other equipment hired by the Customer for the purpose of providing the Services.

Payment means payment in accordance with the Rates annexed to these Terms

PPSA has means the *Personal Properties Securities Act 2009* (Cth)

Services means the transport carrier services and other services performed by Malec and all incidental matters to the provision of Services including but not limited to customs brokerage, import shipping, customs clearance, freight forwarding, packing, unpacking, de-stuffing and deconsolidation road, rail, sea and air carriage, regulatory compliance, customs clearance, tariff consultancy, repair of containers, storage, logistics, warehousing and distribution and break bulk handling of Goods and containers on behalf of the Customer and any other services provided by Malec.

Subcontractor means any person, their servants, or agents, who, pursuant to a contract or arrangement with any other person provides or agrees to provide the Services or any part of the Services and includes subcontractors of the subcontractor on behalf of Malec.

2 Provision of Services

- (a) Malec is not a common carrier and does not accept the Goods as such. Malec accepts no liability as a common carrier. Malec reserves the right to accept or refuse the carriage, transport, repair, storage, or custody of any Goods or any other Service at its absolute discretion, without giving any reason for so doing.
- (b) Malec agrees to provide the Services and Transport of Goods in accordance with these Terms.
- (c) Malec will accept pre-packaged and empty pallets from the Customer and will charge for freight on a per pallet basis, regardless of the weight.
- (d) Malec will accept non packaged and pre-packaged Shipping Containers from the Customer and will charge for freight on a whole Shipping Container basis regardless on the weight.
- (e) Malec will transport Taxi Boxes.

² Malec Management Group (ABN 13 625 357 548), Malec Qld Pty Ltd (ABN 12 631 056 623), Malpynec Pty Ltd (81 601 510 525); Malec Terminal Logistics Pty Ltd (ABN 11 649 032 155)

- (f) Malec will warehouse and store Goods in accordance with these Terms.
- (g) Malec will repair shipping containers in accordance with these Terms.
- (h) Malec reserves the right to refuse at its discretion the supply of Services, including the carriage or transport of Goods.
- (i) The Customer agrees that Malec may engage Subcontractors in which case the Subcontractors shall be entitled to the full benefit of these Terms to the same extent as if Malec had personally performed the Services.

3 Customer Obligations

- (a) The Customer warrants that it will:
 - (i) ensure the Goods are properly packed in a manner having regard to their nature which is adequate to withstand the ordinary risks associated with the anticipated Services to be provided by Malec;
 - (ii) notify Malec immediately of any change in its address or contact details.
 - (iii) maintain adequate insurance coverage over the Goods for the carriage. Malec does not take responsibility for such insurance.
 - (iv) ensure the outer packing i.e. pallet/shipping container are fit and in proper condition for the purposes of the Services;
 - (v) is either the owner of the Goods and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part thereof, and enters into this contract on its own behalf and/or as authorised agent of that person or persons;
 - (vi) has fully and adequately describe in writing the Goods, their nature, weight and measurements and comply with all applicable laws and regulations about the notification, classification, description, labelling, carriage, storage, condition, nature of transport and packaging of the Goods;
 - (vii) irrevocably and unconditionally acknowledges and agrees that Malec is entitled to open any document, wrapping, package or other container in which the Goods are placed or

- carried to inspect the Goods to determine either their nature or condition or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced.
- (viii) will not tender for carriage any explosive, inflammable or other dangerous goods or Restricted Articles within the meaning of The Air Navigation Orders, part 33 of the International Air Transport Association Restricted Articles Regulations and will be liable for all loss and damage of whatever nature (and whether foreseeable or not) occasioned by any person, including Malec, unless authorized in writing by Malec to do so.

- (ix) that Malec is authorised to deliver the Goods at the address given to Malec by the Customer and the Services will be deemed performed if at that address the carrier obtains from any person a receipt or signed delivery docket for the Goods. If the nominated place of delivery should be unattended, Malec may at its option deposit the Goods at that place or store the Goods. If the latter, the Customer must pay or indemnify Malec for all costs associated with such storage. If the Goods are stored, Malec may charge for re-delivery.
- (x) Promptly make payments to Malec in accordance with these Terms;
- (xi) not permit any third party to use its credit account with Malec and remains liable to and indemnifies Malec for all Charges and costs incurred by the unauthorised use of the Customer's credit account.

- (b) The Customer acknowledges that it is aware that Malec is not an insurer of Goods (either warehoused or in transit) and that Malec does not affect insurance on behalf of the Customer. The Customer notes that under these conditions of carriage, subject to its obligations pursuant to the "warranty on deliveries", it has no liability for loss of or damage to the Goods and that if the Customer wishes to protect itself from exposure to potential loss of this nature, it should arrange its own insurance.

4 Dangerous Goods

- (a) The Customer must not tender for transport any explosive or volatile Goods or any Goods which are or may become dangerous,

- inflammable or offensive unless agree to in writing by Malec.
- (b) The Customer must fully disclose to Malec in writing the precise details relating to any Goods which are or may become dangerous, inflammable or offensive. The Customer authorises Malec to open any Goods to determine their nature, ownership or condition if the Goods do not have an identifying feature.
 - (c) If the Customer tenders Goods for transportation in breach of this clause, without consent by Malec, then:
 - (i) the Customer will be liable for all and any loss or losses attributable to the breach; and
 - (ii) if in the sole opinion of Malec the Goods are or become dangerous, inflammable, or offensive, Malec may at any time retain, destroy, dispose of, abandon or render harmless the Goods without compensation to the Customer and without prejudice to Malec's rights to any Charges.
 - (e) If the nominated address for delivery is unattended or if delivery cannot be effected to any person at that address, Malec may at its sole discretion leave the Goods at that address (which is deemed to be delivery of the Goods) or store the Goods. If Malec stores the goods, the Customer shall indemnify and keep indemnified Malec for all costs and expenses incurring in relation to storing the Goods and redelivering the Goods to the Customer from the place of storage.
 - (f) Malec will in its sole discretion determine an appropriate and safe place for delivery. Malec reserves all rights to refuse a direction from the Customer or any agent, representative of the Customer to leave Goods in a specific place if it determines that such delivery may cause damage.
 - (g) In the event that Malec advises you that an item and / or an area of the original or final destination will likely suffer damage if an item is moved in accordance with your instructions, and you advise us to attempt to move the item, then we will not be responsible for any damage caused under any circumstances.

5 Delivery

- (a) Goods are deemed to be in transit even if the carriage of the Goods has been interrupted by Malec or diverted from the usual route for the carriage.
- (b) Freight is considered earned as soon as the Goods are loaded and dispatched.
- (c) In order to provide the Service specified by the Customer, Malec reserves the right to use, or may use, any method or methods of carriage at its absolute discretion including, without limitation, road, rail, sea or air and the Customer is deemed to have authorised such method of methods. Without limiting any of the Customer's obligations under these Terms, it is the responsibility of the Customer to comply with all the applicable laws (including, where necessary, the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and International Maritime Dangerous Goods Code) relating to the notification or description on the consignment note or in another written form.
- (d) Malec will deliver the Goods to the delivery address given to Malec by the Customer. Delivery is deemed to have occurred if a receipt or signed delivery docket for the Goods is obtained.
 - (ii) While Malec will use all reasonable endeavours to provide Proof of Delivery (POD) on request (surcharge may apply), PODs may not be available to the Customer for all deliveries.
 - (ii) Malec is not liable to the Customer for failing to provide a POD;
 - (iii) the non-provision of POD is not a reason to withhold Payment;
 - (iv) any of the following is conclusive proof of delivery, even without a POD either the original or electronically;
 - (A) a statement signed by the delivery driver that delivery was made;
 - (B) driver's run sheet;
 - (C) photographs of delivery;
 - (D) Personal Data Authority confirmation;
 - (E) Signed acknowledgment of recipient;
 - (F) Agent's consignment note;
- (h) The Customer irrevocably and unconditionally acknowledges and agrees that:

- (G) Signed label;
- (H) POD run sheet;
- (I) Photographs;
- (J) GPS Data;
- (K) Driver run book of that delivery.

6 Payment Terms

- (a) The Customer must pay Malec any charges invoiced within seven days (7) of the date of any invoice issued by Malec in accordance with the Rates Schedule annexed to these Terms or as otherwise provided and agreed by Malec in writing. All amounts payable to Malec under these Terms must be paid immediately when due without deduction or deferment on account of any claim, counterclaim or any set-off whatsoever.
- (b) The Customer irrevocably and unconditionally acknowledges and agrees that the Rates Schedule amounts are not fixed for any time period, and that Malec may vary those rates from time to time in accordance with industry custom, external influences or Malec's absolute discretion, or in accordance with these Terms.
- (c) The rates and charges applicable to the Customer are those as notified in writing by way of:
 - (a) Rates Schedule annexed to these Terms;
 - (b) as published from time to time on Malec's website as listed in this agreement; or
 - (c) by any other written notice sent to the Customer by Malec.
- (d) Any increase to rates and charges are deemed to be accepted by the Customer from the date the change was notified to the Customer by any of the means set out in clause 6(c), unless written objection to the increase is received by Malec first in which case if Charges can not be agreed, Malec will terminate future Services.
- (e) In addition to charges set out in the Rates Schedule annexed to these Terms, the Customer must pay Malec any additional expense that Malec has incurred in providing

the Services and maintaining the Customer's account with Malec ("Additional Charges").

The Additional Charges include but are not limited to:

- (i) fuel surcharges;
- (ii) toll charges or levies;
- (iii) account keeping fees;
- (iv) minimum pick-up fees;
- (v) excessive proof of delivery requests;
- (vi) late fees;
- (vii) frustrated delivery to cover its costs and expenses;
- (viii) Lift Charges for difficult to reach or access Goods, which will be charged at:
 - (ix) \$25.00 (AUD) (inclusive of GST) per lift for containers;
 - (x) \$5.00 (AUD) (inclusive of GST) per lift per pallet.
- (xi) costs and expenses associated with delays in loading or unloading; and
- (xii) labour to load or unload the Goods.
- (xiii) A redelivery charge will apply where an attempt to deliver fails due to receiver being unavailable or unable to sign for delivery.
- (xiv) The Additional Charges are as published from time to time on Malec's website listed in this agreement or as notified in writing to the Customer. If no figures are published or notified, then they are changed at cost plus 15%.
- (xv) Where a specific delivery time is requested for delivery, a pre-alert charge will apply.
- (xvi) Invoices for Services paid for by credit card will attract a surcharge of 1.5%.
- (xvii) These Terms are a bar to any proceedings being commenced against Malec and as a bar to defence in proceedings commenced by Malec while any Payment for any account remains outstanding
- (xviii) Any discounts which have been offered on the schedule of rates

annexed to these Terms are contingent upon the Customer observing and complying strictly with the terms in this agreement. This includes Payment of invoices within trading terms. Discounts to all invoices will cease to apply if Payments are not made within trading terms.

7 Credit information and privacy

- (a) The Customer authorises Malec to share credit information regarding this agreement with third parties and to conduct due diligence by contacting third parties to verify the information contained in this application, or any other document, and investigate or make enquiries from time to time with those third parties as Malec sees fit so to assess the credit worthiness at any point in time.
- (b) The authority given in clause 7(a) is an irrevocable authority and this agreement may be used as evidence of the Customer's consent when contacting third parties.

8 Hire Equipment

- (a) At least [7] days before the provision of the applicable Services, the Customer must give written notice to Malec setting out the type of Hire Equipment that will be used in connection with the Services (for example, Shipping Containers, Taxi Boxes or Trailers).
- (b) The Customer irrevocably and unconditionally acknowledges and agrees that:
 - (i) Malec will not be liable to the Customer in connection with any loss or replacement of Hire Equipment in any circumstances;
 - (ii) the Customer will be responsible to manage Hire Equipment that is dispatched with Malec's driver; and
 - (iii) the Customer accepts responsibility to recover Hire Equipment from consignees, and will make arrangements, at its own cost, for the return of Hire Equipment.
- (c) The Customer releases Malec from all liability, claims and demands relating to Hire Equipment.

- (d) If any Hire Equipment has not been packed or stuffed by Malec, Malec shall not be liable for loss of or damage to the contents of the Hire Equipment if caused by:
 - (i) the manner in which the Hire Equipment has been packed or stuffed;
 - (ii) the unsuitability of the contents for carriage in the Hire Equipment, unless Malec has approved the suitability of those contents in writing;
 - (iii) the unsuitability or defective condition of the Hire Equipment.

9 Title and Personal Property Security Act

- (a) The Customer grants Malec a security interest pursuant to the Act in all Goods the subject of the Services and held in Malec's possession.
- (b) While the Customer complies with this agreement Malec will not seek to register its interest in the Goods, but will do so if the Customer breaches any of the terms of this agreement, including Payment outside of the trading terms (in relation to any service, unrelated to the Goods or otherwise).
- (c) The Customer will, upon request, execute any documents, provide all necessary information and do anything else required by Malec to ensure that the security interest constitutes a "perfected security interest" as defined in the Act, in order for the interest to have priority over all other security interests in the Goods not already registered.
- (d) If the Customer is in breach of these terms and Malec takes steps to register its interest, the Customer agrees to pay upon demand all of Malec's expenses and legal costs (on a solicitor and client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by this agreement.
- (e) If you the Customer is in breach of these terms, you will ensure that our security position, rights and obligations, are not adversely affected by the PPSA;

- (f) PPSA Exclusions [s115(1)]. To the extent allowable under section 115(1) of the PPSA, sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA are contracted out of and your rights pursuant to them cease.
- (g) PPSA Exclusions [s115(7)]. To the extent allowable under section 115(7) of the PPSA, sections 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5), and 137 of the PPSA are contracted out of and your rights pursuant to them cease.

10 Charge and security

- (a) In this clause, **Property** means real property while the Act is in force, and both real and personal property if the Act is repealed or no longer applies to personal property.
- (b) The Customer charges in Malec's favour all of its estate and interest in any Property that it owns now or in the future with due Payment to Malec of all monies owing or may become payable in accordance with this agreement.
- (c) Malec has a lien on the Goods and all associated documents and on any Goods in which the Customer may have an interest, and which may have come into Malec's possession for any reason. The lien is a general lien for all monies owing, or alleged by Malec to be owing, by the Customer to Malec.

11 Storage

- (a) Malec may store, warehouse and land the Goods in any place, store or warehouse whatsoever and every such dealing with the Goods shall be deemed to be within the scope of these conditions.
- (b) Goods are stored at the Customer's sole risk. Malec accepts no responsibility in tort or in contract for the loss of or damage to any Goods howsoever arising.
- (c) The Customer warrants that it owns the Goods or has authority to deal with them and has full right power and authority to store the Goods and to enter into this contract, warrants that except where the receipt for the Goods are endorsed with the word "hazardous", the Goods are non-hazardous as defined from time to time

- by the Insurance Council of Australia Limited and warrants that the Goods are free from, and are not likely to encourage infestation by vermin or pest.
- (d) All charges for storage and other services will be calculated in accordance with Malec's Schedule of Rates annexed to these Terms.
- (e) All charges for storage will accrue from day to day and will be payable from time to time on demand. No accounting reconciliation (or like) conducted by Malec will waive Malec's rights to demand Payment under this clause.
- (f) Charges for storage and other services do not include insurance which, if required, **must be taken out by the Customer.**
- (g) The Customer will indemnify Malec against any duties or other moneys which Malec is called upon or obliged to pay in respect of the Goods to any person or body and howsoever arising. Without in any way limiting the generality of this Indemnity, it is to include liability on the part of the Customer to indemnify Malec in respect of any Payment it may be called upon or obliged to pay to the Crown, the Collector of Customs or any other statutory body or authority whether representing the Crown or not, as well as any private body company or person and whether the obligation to pay the said duties or moneys arises by reason of any statute proclamation, declaration, rule, by-law or other legislative or quasi-legislative act or by reason of liability arising in contract in tort or by reason of the existence of any lien charge bill or sale mortgage or other hypothecation of the Goods or under any hire purchase agreement or by reason of the law relating to companies, bankruptcy, insolvency or execution or otherwise. The indemnity conferred upon Malec shall continue in full force and effect whether or not the Goods are or have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default omission, neglect or default of any such breach of duty or obligation of Malec, its servants or agents.

- (h) Malec may at any time and in its absolute discretion give 28 days' notice to the Customer to remove its Goods from the warehouse within such further time as is specified in the notice. If the Customer does not remove the Goods, Malec may sell the Goods according to the provisions of the relevant state legislation and the regulations relating to warehousemen's liens.
- (i) Malec may without notice and at the Customer's expense remove and if thought fit dispose of or destroy all or any of the Goods which in the opinion of Malec shall be or become deteriorated objectionable or unwholesome, a source of danger or contamination or hazardous, as defined from time to time by the Insurance Council of Australia Ltd of the state or territory in which this contract is made.
- (j) In the sale of any Goods under these conditions, Malec must comply with the provisions of any legislation or regulations relating to warehousemen's liens, as regulate the sale of Goods by a warehouseman.
- (k) Malec is entitled to subcontract any part of the warehousing in its absolute discretion and is entitled to move the Goods between warehouses under its control from time to time. Any requests by the Customer for the Goods to be transported or moved shall, if accepted by the Malec, be transported on Malec's Terms prevailing at the time of the request.

secondly against any auction costs and any incidental costs of Malec (including the costs of its employees or agents or solicitors in arranging the sale or disposal of the Goods). The balance will be paid to the Treasury under the applicable legislation of the State where the Goods are stored.

- (c) If, in the opinion of Malec, the costs associated with the sale will exceed the proceeds to be obtained, Malec may dispose of the Goods by any means after the period of (2) two months, be that by donation to charity or otherwise.

13 Recovery, interest and suspension of account

- (a) If the Customer fails to pay any Charges when due (**Due Amount**):
 - (i) Malec may place an automatic stop service on the Customer's account and shall not be liable to the Customer for any loss or damage arising from the same; and
 - (ii) the Customer must pay interest on the Due Amount from and including the due date for payment up to and including the date of actual payment at a rate of 8.5% per annum. This rate applies to any period after a judgment as well as before a judgment. Interest accrues on a daily basis; and
 - (iii) the Customer pay to Malec any expenses, costs or disbursements incurred for or in connection with the recovery of the Due Amount on a full indemnity basis.

12 Uncollected Goods

- (a) If Goods are undeliverable for whatever reason Malec will hold them in safe keeping for (2) two months. The cost of the storage will be paid by the Customer. Malec will be entitled to retain the Goods until Payment of the storage fees have been paid.
- (b) If after the period of storage noted in clause 12(a), the Goods are not collected (and regardless of whether the Service has been paid for and regardless of any notice being provided to the Customer that the Goods are being held), the Customer authorises Malec to dispose of those Goods by way of public auction. Malec may apply the proceeds firstly to any outstanding storage costs and attempted delivery (if any) fees,

- (b) If at any time the Customer is outside of the Payment trading terms contained in this agreement, cancels a pickup or order, seeks or obtains an alternate service provider or is in breach of any other term of this agreement then Malec may suspend the credit account or cease services as at that date, including where Goods are in transit or warehoused awaiting delivery. If the account is cancelled or suspended, Malec will be at liberty to take steps to immediately recover all monies owing for Services provided or contracted without regard to credit terms.
- (c) If the Customer fails on reasonable demand being made to pay charges due to Malec in respect of any services rendered by Malec then Malec may detain or sell any of the Goods of the Customer which are in its possession at any time. This applies whether the charges relate to that contract of carriage or previous contracts and, out of the monies

arising from such sale, retain any monies due to Malec together with all charges and expenses of the detention or sale and will render the surplus (if any) of the monies arising from any sale, and such of the Goods as remain unsold, to the party entitled to that sale. Any such sale will not prejudice or affect the right of Malec to recover from the Customer the balance of any such charges due or payable in respect of such service, or the detention or sale.

14 Representations and limitation of liability

- (a) The Customer warrants and represents that it owns or is duly authorised by the owner to deal with, the Goods.
- (b) This contract is pursuant to the *Competition and Consumer Act 2010* (Cth).
- (c) Except where otherwise provided in this Agreement, to the maximum extent permitted by law, Malec shall not be liable for any Losses arising from or in connection with:
 - (a) the act or omission of the Customer or any person acting on the Customer's behalf;
 - (b) compliance with the instructions given to Malec by the Customer or any other person entitled to give such instructions on behalf of the Customer;
 - (c) the insufficiency of the packing or labelling of the Goods in accordance with clause 3(a);
 - (d) a breach of any of the warranties given by the Customer in clause 3.
- (d) subject to the limitation of liability in clauses 14(c) and 14(e), the handling, loading, stowage or unloading of the Goods (except where this forms part of the Services).
- (e) Subject to clause 14(c), and except as expressly provided to the contrary in these Terms, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to these Terms or its subject matter are excluded to the maximum extent permitted by law.
- (f) Where Malec is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to these Terms ("Non-Excludable Provision"), and Malec is able to limit the Customer's remedy for a breach of the Non-Excludable Provision,

then Malec's liability for a breach of the Non-Excludable Provision is limited to (at the Malec's discretion):

- (a) in the case of the supply of Goods, the repair or replacement of the Goods or the supply of substitute goods (or the cost of doing so); or
 - (b) in the case of the supply of Services, the supplying of the Services again, or the payment of the cost of having the Services supplied again.
- (g) Subject to Malec's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law:
- (a) Malec's liability for all claims under or relating to these Terms or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the total amounts invoiced by Malec for the provision of the Services; and
 - (b) Malec will not be liable for loss or damage to property other than the Goods themselves, and will not be liable to the Customer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Customer has incurred, or amounts that the Customer is liable to pay to third parties.
- (h) To the maximum extent permitted by law, the limitation of liability in clauses 14(c),(d),(e),(f) and (g) extends to, without limitation:
- (a) not only loss of or damage to the Goods themselves, but loss, damage or injury to any person or property arising in connection with Malec providing the Services under these Terms;
 - (b) any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery of the Goods or documentation.
- (i) All the rights, immunities and limitations of liability in this clause 14 shall continue to have full force and effect notwithstanding any breach of this Agreement by Malec or any other person entitled to the benefit of such

provisions which are severable to the extent that they are invalid or unenforceable.

- (j) To the extent permitted by law, notice in writing of any claim intended to be made under this Agreement must be given to Malec within fourteen (14) days after the date of delivery or, in the case of non-delivery, within thirty (30) days from the date the Services should have been completed, or the Goods should have been delivered. The Customer irrevocably and unconditionally acknowledges and agrees that unless notice of a claim is given to Malec in accordance with this clause 14(j), the Customer releases Malec from such a claim.
- (k) To the maximum extent permitted by law, Malec shall be released from and discharged of all liability whatsoever in connection with this Agreement, the Services and/or the Goods unless:
 - (a) notice of any claim is received by Malec in writing within (14) days after the date specified in clause 14(j); and
 - (b) an action is brought in the proper form and written notice of such action is received by Malec within nine (9) months after the date specified in clause 14(j).
- (l) For the purposes of clause 14(k), the applicable dates are:
 - (a) in the case of loss or damage to Goods, the date of delivery of the Goods;
 - (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered; and
- (m) in any other case, the event giving rise to the claim.
- (n) Where goods are carried on any sea going vessel the carriage is subject to terms and conditions of such shipowner's bill of lading in use at the time of shipment and in no circumstances will Malec be liable for loss or damage howsoever occasioned whilst the goods are in the care, custody or control of such shipowner.

15 General indemnity and liability of the Customer

- (a) The Customer must indemnify Malec and keep Malec indemnified from and against all liability, loss, damage, penalty, charge, claim, harm, injury, costs or expenses of any kind whatsoever (including consequential loss)

incurred or suffered directly or indirectly from or in connection with:

- (a) any act or omission of the Customer or of the Customer's employees, contractors or agents;
 - (b) any negligence or unlawful conduct of the Customer or of the Customer's employees, contractors or agents;
 - (c) any breach of these Terms by the Customer or the Customer's employees, contractors or agents; or
 - (d) the performance of the Services, except to the extent that caused or contributed to by the negligence, willful default or unlawful act of Malec.
- (b) Without limiting clause 15(a) above, except to the extent caused by the Malec's negligence, willful default or unlawful act, the Customer must indemnify Malec and keep Malec indemnified in relation to:
- (a) all duties taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority; and
 - (b) all payments, fines, costs (including legal costs and disbursements), expenses, loss and damage whatsoever incurred or sustained by Malec,

in connection with the performance of the Services.

16 Confidentiality

- (a) The Customer and Malec, and any employees, agents or sub-contractors of the parties, must not disclose Confidential Information belonging to the other without prior written consent unless the disclosure is to:
 - (a) A Third Party, where such disclosure is necessary for the supply of the Goods/ or the Services;
 - (b) Their insurers or legal advisors;
 - (c) Required by law or a regulatory authority.

This clause survives termination of these Terms.

17 General

- (a) No party will be responsible for any loss, damage or delay in performance of any obligation if attributable to Force Majeure.
- (b) No failure or delay by Malec in exercising any right or remedy under these Terms constitutes a waiver. No single or partial exercise of any right or remedy will preclude any further exercise of that or any other right or remedy.
- (c) The Customer will be in breach of this agreement if at any time it becomes the subject of bankruptcy proceedings, voluntarily enters into bankruptcy, goes into liquidation either compulsorily or voluntarily, if a receiver is appointed in respect of the whole or any part of its assets, if it makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, or any judgment is made against the Customer or any similar occurrence under any jurisdiction affects the Customer.
- (d) These Terms are governed by and will be construed in all respects in accordance with the law of Victoria. The Customer submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria in respect of any proceedings in connection with these Terms.
- (e) Any provision in these Terms which is prohibited or unenforceable is to be severed to the extent necessary to make these Terms enforceable, unless it would materially change the intended effect of these Terms.
- (f) Any notice to be given by Malec to the Customer are sufficiently given if sent by prepaid ordinary mail enclosed in an envelope addressed to the Customer at the address nominated on this agreement.
- (g) Any notice will be deemed to be delivered three business days after the date of postage. The deemed service provisions of this clause apply despite any evidence of the Customer in relation to actual notice or lack of evidence.

Rates Schedule – To Be Provided Once the Customer’s Application has been successful



GUARANTEE AND INDEMNITY

This guarantee and indemnity (**Guarantee**) between the person(s) named in item 7 of the Credit Application (**Guarantor**) and Malec Holdings Pty Ltd ACN 077 896 201 trading as Malec Bros Transport Group (**Malec**) comes into effect immediately on approval of the Application.

BACKGROUND

At the Guarantor's request, Malec agreed to supply the person named in item 1 of the Application (**Customer**) with transport carrier services on the terms set out in the Terms.

OPERATIVE PROVISIONS

1 Guarantee

In consideration of Malec providing the transport services in accordance with its Terms at the Guarantor's request, the Guarantor unconditionally guarantees the due and punctual observance and performance by the Customer of all its liabilities, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) to Malec under or in connection with Malec's Terms (**Customer's Obligations**). This Guarantee is a principal obligation and is not ancillary or collateral to any other right or obligation; is continuing for the whole of the Customer's Obligations; and is absolute, unconditional and irrevocable, and remains in full force and effect until the Customer's Obligations have been irrevocably discharged in full.

2 Interest

The Guarantor must pay interest on each part of the Customer's Obligations which is monetary in nature and is not paid when due from the day it falls due, with interest accruing at the same rate and in the same manner as the Customer is required to pay under the Terms both before and (as a separate, independent obligation) after any judgment.

3 Guarantor's liability absolute

The liability of the Guarantor is absolute and is not affected by any circumstance, act, omission, matter or thing which, but for this provision, might affect it at law or in equity. Malec is under no obligation to give the Guarantor notice of any default by the Customer or to include particulars of the Customer's default in any demand made under this Guarantee resulting in the demand. This Guarantee extends to cover the Terms as amended, varied or replaced.

4 Limitations on Guarantor's rights

Until the Customer's Obligations are irrevocably performed in full, the Guarantor will not take any steps to enforce a right or claim against the Customer for any money paid by the Guarantor to Malec under this Guarantee or exercise any rights as surety in competition with Malec.

5 Indemnity

The Customer unconditionally and irrevocably indemnifies Malec as a separate and independent principal obligation against any loss (including consequential or economic loss) Malec suffers or incurs:

- (a) If the Customer does not, is not obliged to, or is unable to, pay any Amount(s) to Malec arising under the Terms or perform its obligations under the Terms document (Guaranteed Money) which is due and payable;

- (b) if the Guarantor is not obliged to pay Malec an amount or perform any obligation under clause 1, including because the liability of the Guarantor is unenforceable, in whole or in part, or as a result of lack of capacity, power or authority or improper exercise of power;
- (c) if the Guarantor defaults or fails to comply with its obligations under this Guarantee;
- (d) in connection with any person exercising, or not exercising, rights under this deed;
- (e) if the Debtor defaults or fails to comply with its obligations under any document under which the Guaranteed Money is payable or the Guaranteed Obligations are due; or
- (f) if for any reason, the Guaranteed Money is not recoverable or recovered by Malec from the Debtor or the Debtor is not required to perform its obligations.

Each Guarantor, as principal debtor agrees to pay Malec on demand, any loss described in this clause 5.

This indemnity extends to any money that is not recoverable or obligation that is not required to be performed or complied with because of any legal limitation, disability or incapacity of or affecting the Debtor, the Guarantor or any other person, or because any transaction relating to that money was void, illegal, voidable or unenforceable and whether or not Malec knew or should have known any of the relevant matters or facts, and irrespective of any fact or circumstance.

6 Security

- (a) To secure the Customer's Obligations, the Guarantor hereby grants a security interest in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the *Personal Properties Securities Act 2009* (Cth)) (**Personal Property**) to Malec. The Guarantor agrees to mortgage all of its present and future interests in any real property to Malec, as security for the performance of its obligations under this Agreement including payment of the amounts payable under the Agreement.
- (b) The Guarantor must, within 10 days of request from Malec, execute such documents as Malec requires to perfect the security interest. The Guarantor must pay on demand any stamp duty (including any fines and penalties) assessed in connection with the security interest. The costs of registering a financing statement will be paid by the Guarantor.
- (c) Malec may release or otherwise deal (either in whole or in part) with any and all securities now or in the future held by Malec for the Customer's Obligations and the Guarantor's obligations under this Guarantee without releasing or affecting the liability of the Guarantor under this Guarantee.

7 Joint and several Guarantee

- (a) Any condition or agreement under this Guarantee by or in favour of two or more persons is deemed to bind them jointly and severally, or be in favour of each of them severally. If the Guarantor comprises more than one person Malec may proceed against any or all of them as Malec may choose in its absolute discretion, and Malec will not be obliged to make any claim against all the persons comprising the Guarantor. A release by Malec of any Guarantor from this Guarantee will not affect the liability of the other Guarantors.
- (b) This Guarantee may be enforced against the Guarantor by Malec either alone, jointly, severally, or jointly and severally with any other person.

8 Malec's calculation

A statement by an authorised representative of Malec as to the amount for the time being owing by the Customer or the Guarantor to Malec or as to the interest from time to time payable is prima facie proof of the amount and/or interest owing at that time.

9 Acknowledgment

The Guarantor acknowledges that Malec is providing the Services in reliance on the Guarantor's representation that it has received a copy of the Application and the Terms and has obtained independent legal advice on the nature and effect of this Guarantee or has otherwise had the opportunity to do so but has chosen not to obtain.

10 Expenses

The Guarantor indemnifies Malec against all reasonable expenses in connection with entry into, enforcement of, or preservation of any rights under, this Guarantee including legal expenses on a full indemnity basis.

11 Assignment

Malec may deal with and create any interest in its rights under this Guarantee without any other party's consent.

12 Waivers, remedies cumulative

No failure or delay by Malec in exercising any right or remedy under this Guarantee constitutes a waiver. No single or partial exercise of any right or remedy will preclude any further exercise of that or any other right or remedy. The rights and remedies provided to Malec in this Guarantee are cumulative and are not exclusive of any rights or remedies provided by law.

13 Governing law and jurisdiction

This Guarantee is governed by the law of Victoria. The Guarantor submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria in connection with this Guarantee.

14 Severability of provisions

Any provision in this Guarantee which is unenforceable is to be severed to the extent necessary to make this Guarantee enforceable, unless it would materially change the intended effect of this Guarantee.

Each Guarantor acknowledges that they:

- (a) have read and understood this Guarantee and Indemnity;
- (b) prior to executing this Guarantee and Indemnity, have had the opportunity to obtain independent legal and/or financial advice; and
- (c) have made their own enquiries and are responsible for continuing to make their own enquiries as to the financial position of the Applicant and have not relied on any statement made by or on behalf of Malec.

Signature of First Guarantor:.....

Signature of Second Guarantor:.....

Name of First Guarantor:.....
(Block letters)

Name of Second Guarantor:.....
(Block letters)

WITNESS SIGNATURE:.....

WITNESS SIGNATURE:.....

WITNESS NAME :.....
(Block letters)

WITNESS NAME :.....
(Block letters)

DATE:.....

DATE:.....